1819.

# SUPREME COURT OF THE UNITED STATES.

## No. 168.

WILLIAM CHRISTY, PLAINTIFF IN ERROR,

vs.

JAMES D. FINLEY.

ERROR FROM DISTRICT COURT, UNITED STATES, FOR THE DISTRICT OF TEXAS.

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[GIDEON, Print.]

THE UNITED STATES OF AMERICA,
*District of Texas, to wit:*

Pleas held before the honorable John C. Watrous, judge of the district court of the United States, for the district aforesaid, at a term of said court begun and held at the court-house of said court, in the city of Galveston, and State of Texas, on the second Monday, being the 12th day of May, A. D. 1851, and seventy-fifth year of American independence.

WILLIAM CHRISTY, plaintiff,
vs.
JAMES D. FINLEY, defendant.

Trespass.

Be it remembered, that, heretofore, to wit, on the 10th day of July, A. D. 1849, the plaintiff aforesaid, by his attorney, Robert Hughes, came into the clerk's office of the said district court aforesaid, and filed his petition against the defendant, in the words and figures following, to wit:

UNITED STATES OF AMERICA,
*District of Texas.*

District court, December term, 1849.

To the honorable John C. Watrous, judge of the said district.

The petition of William Christy, a citizen and resident of the city of New Orleans, and State of Louisiana, plaintiff, against James Finley, a citizen and resident of the county of Harrison, and State of Texas, defendant; and thereupon your petitioner, humbly complaining, respectfully represents unto your honor that heretofore, to wit, on the first day of June, A. D. 1849, at, to wit, in the district aforesaid, he was seized in his demesne as of fee, of, in, and to a certain tract or parcel of land, situate, lying, and being in the county of Harrison aforesaid, in the district aforesaid, between the Sabine and Red rivers, and south of Soda lake, and butted and bounded as follows, to wit: Beginning at a corner post from which a hickory, eighteen inches in diameter, bears south twenty-eight degrees west, two and three-fifths varas distant, and a pin oak, twenty inches in diameter, bears north twenty degrees west, three varas distant; thence north five thousand varas, intersecting, at the distance of fourteen hundred varas, a ravine running east, and at three thousand two hundred varas, a creek also running east, to the second corner from which a hickory, fifteen inches in diameter, bears north seventy degrees west, eleven varas dis-

tant, and an oak, fifteen inches in diameter, bears south fourteen degrees east, four and a fifth varas distant; thence west fifteen thousand varas, intersecting, at the distance of twenty-four hundred varas a creek running southeast, and at five thousand varas a ravine running northeast, and at six thousand varas a ravine also running northeast, and at twelve thousand two hundred varas, a creek also running northeast, to the third corner post, from which a black jack, fifteen inches in diameter, bears north four degrees east, five and two-fifths varas distant; thence south five thousand varas intersecting at the distance of one hundred varas a ravine running east, and at three thousand four hundred varas a ravine also running east, to the fourth corner post, from which a black jack, twelve inches in diameter, bears north twenty-three degrees west, three and two-fifth varas distant, and another black jack, fourteen inches in diameter, bears south seventy-eight degrees east, five and two-fifths varas distant; thence east, to the first corner post, fifteen thousand varas, intersecting at the distance of six thousand seven hundred varas a ravine running southeast, at eleven thousand four hundred varas another ravine also running southeast, containing three leagues or seventy-five millions square varas of land, be the same more or less, with the hereditaments and appurtenances thereunto belonging, or in any wise appertaining; and being so seized, and then and there possessed of the same, the said James Finley then and there, afterwards, to wit, on the day and year aforesaid, at the district aforesaid, with force and arms, entered in and upon the said land, situated, butted, and bounded as aforesaid, with the hereditaments and appurtenances thereunto belonging, and then and there ejected, expelled, put out, and amoved your petitioner from the said land and tenements, with the hereditaments and appurtenances thereunto belonging, so situated, butted, and bounded as aforesaid, and from the possession, use, occupation, and enjoyment of the same, and kept and continued him so ejected, expelled, put out, and amoved for a long space of time, to wit, from thence hitherto, and other wrongs then and there did, to the great damage of your petitioner; wherefore he says he is injured and hath sustained damage to the value of twenty thousand dollars.

And your petitioner would further represent unto your honor, and complain, that also, heretofore, to wit, on the said first day of June, A. D. 1849, in the district aforesaid, he was seized in his demesne, as of fee, of, in, and to another tract or parcel of land, situate, lying, and being in the said county of Harrison, also between the Sabine and Red rivers, and south of the Soda lake aforesaid, which is butted and bounded as follows, to wit: Beginning at a corner post, from which a red oak, eighteen inches in diameter, bears north forty-four degrees west, nine and three-fifths varas distant, and a hickory, ten inches in diameter, bears south eighty-four degrees east, six and three-fifths varas distant; thence north five thousand varas, intersecting at the distance of four hundred varas a creek, ten varas wide, running east, and at twelve hundred varas another creek, fifteen varas wide, running east,

and at four thousand five hundred varas another creek, ten varas wide, running east, to the second corner, a post, from which a red oak, eighteen inches in diameter, bears south seventy-six degrees west, nine and one-fifth varas distant, and a white oak, twelve inches in diameter, bears north seventy-six degrees east, fourteen varas distant; thence west five thousand varas to the third corner, a post, from which a hickory, eighteen inches in diameter, bears north twenty degrees west, three varas distant; thence south five thousand varas, intersecting at one thousand varas a creek, ten varas wide, running east, and at fourteen hundred varas another creek, ten varas wide, also running east, at twenty-six hundred varas another creek, ten varas wide, also running east, and at four thousand three hundred varas a ravine running east to the fourth corner, a post, from which a hickory, fifteen inches in diameter, bears north fifteen degrees east, three varas distant, and another hickory, fifteen inches in diameter, bears south eighty-eight degrees east, sixteen varas distant; thence south five thousand varas to the first corner, intersecting at the distance of three thousand varas a creek, ten varas wide, running northeast, containing one league, or twenty-five millions square varas of land, be the same more or less, with the hereditaments and appurtenances thereunto belonging, or in any wise appertaining; and being so thereof seized, and then and there possessed of the same, the said James Finley then and there, afterwards, to wit, on the day and year last aforesaid, at the district aforesaid, with force and arms, entered in and upon the said land, situated, butted, and bounded as aforesaid, with the hereditaments and appurtenances thereunto belonging, and then and there ejected, expelled, put out, and amoved your petitoner from the said lands and tenements, with the hereditaments and appurtenances thereunto belonging, so situated, butted, and bounded as aforesaid, and from the possession, use, occupation, and enjoyment of the same, and kept and continued him so ejected, expelled, put out, and amoved for a long space of time, to wit, from thence hitherto, and other wrongs then and there did, to the great damage of your petitioner; wherefore he says he is injured and hath sustained damage to the value of twenty thousand dollars.

And your petitioner would further represent unto your honor, and complain that, heretofore, to wit, on the said first day of June, A. D. 1849, at, to wit, in the district aforesaid, he was seized in his demesne, as of fee, of, in, and to another tract or parcel of land, situate, lying, and being in the said county of Harrison, in the district aforesaid, between the Sabine and Red rivers, south of Soda lake, and butted and bounded as follows, to wit:

Beginning at a post, from which a red oak, eighteen inches in diameter, bears south seventy-six degrees west, four and one-fifth varas distant; and a white oak, twelve inches in diameter, bears north seventy-six degrees east, fourteen varas distant; thence north five thousand varas, intersecting at the distance of one hundred varas a ravine running east, and at nineteen hundred varas a stream, ten varas wide, also running east, and at the distance of twenty-six hundred varas a

ravine, running southeast to the second corner a post, from which a black jack, sixteen inches in diameter, bears south eighty-eight degrees west, four and four-fifths varas distant, and a hickory, fourteen inches in diameter, bears north forty-three degrees east, six varas distant; thence west five thousand varas to a post, the third corner, from which an oak, fifteen inches in diameter, bears south fourteen degrees east, four and one-fifth varas distant, and a hickory, fifteen inches in diameter, bears north seventy degrees west, eleven varas distant; thence south five thousand varas, intersecting at twenty-one hundred varas a ravine running east, to a post, the fourth and last corner, from which a hickory, eighteen inches in diameter bears south, twenty-eight degrees west, two and three-fifths varas distant, and a red oak, twenty inches in diameter, bears north twenty degrees west, three varas distant; thence east five thousand varas to the first corner, containing one league, or twenty-five million square varas of land, be the same more or less, with the hereditaments and appurtenances thereunto belonging or in any wise appertaining; and being so thereof seized, and then and there possessed of the same, the said James Finley then and there, afterwards, to wit, on the day and year aforesaid, at the district aforesaid, with force and arms entered in and upon the said lands, situated, butted and bounded as aforesaid, with the hereditaments and appurtenances thereunto belonging, and then and there ejected, expelled, put out, and amoved your petitioner from the said lands and tenements, with the hereditaments and appurtenances, so situated as aforesaid, and from the possession, use, occupation, and enjoyment of the same, and kept and continued him so ejected, expelled, put out, and amoved for a long space of time, to wit, from thence hitherto, and other wrongs then and there did to the great damage of your petitioner; wherefore he says he is injured and hath sustained damage to the value of twenty thousand dollars.

The premises considered, your petitioner prays that process of citation issue to the marshal of the district aforesaid, commanding, &c., that the said James Finley may be made a defendant hereto, may appear and answer this petition; and that after due trial had by and before your honor, according to the rules of law, your petitioner may have judgment for such damages as he has sustained by reason of the premises, and for the recovery of the lands aforesaid, with the hereditaments and appurtenances aforesaid, for his costs about his suit in this behalf expended, with writ of possession upon recovery of said lands, &c., or that he may obtain such relief as he is entitled to; and your petitioner, as in duty bound, will ever pray, &c.

ROBERT HUGHES, *P. Q.*

And afterwards, to wit, on the 11th day of the month of July, in the year last aforesaid, the clerk of said court issued process of citation, in the words and figures following, to wit:

UNITED STATES DISTRICT COURT,
*District of Texas.*

The President of the United States of America, to the marshal, or any of his lawful deputies, of the district of Texas, greeting:

You are hereby commanded to summon James Finley, if he be found in your district, to be and appear before the honorable the district court of the United States, at a court to be holden in and for the district of Texas, at the city of Galveston, on the first Monday of December next, to answer the petition and complaint of William Christy, in an action amounting to the sum of twenty thousand dollars, of which you will serve the defendant with the accompanying copy of said petition.

Witness the honorable John C. Watrous, judge of said court, and seal of court, at the city of Galveston, this eleventh day of [SEAL.] July, A. D. 1849, and seventy-fourth year of the independence of the United States.

JAMES LOVE, *Clerk.*

Which process of citation was returned by the marshal of said district with the following endorsement thereon, to wit:

Received 13th July, A. D. 1849, and executed 2d October, 1849, by serving the defendant in person with a true copy of this summons, and an attested copy of petition as furnished by the clerk of this court.

J. BATES,
*U. S. marshal, district of Texas.*

And afterwards, to wit, at a term of said court begun and held as aforesaid, on the first Monday in the month of December, in the year last aforesaid, and continued by adjournment to the 24th day of January, A. D. 1850, the following order was made herein, to wit:

By consent of the parties this cause is continued, and leave is given the defendant, until the first day of February next, to file his answer. And it is further agreed by the parties, that the surveyor of Harrison county shall go upon the land in controversy, upon a day to be designated by him, whereof twenty days' notice is to be given to the parties herein, and survey and lay out the same as either party shall require, and return a fair plat and report thereof to the next term of this court.

And afterwards, to wit, on the 4th day of February, in the year last aforesaid, the defendant, by his attorneys, Henderson, Hill, Frazier, and Shedd, came into said court and filed the defendant's answer in the words and figures following, to wit:

UNITED STATES OF AMERICA,
*District of Texas.*
District court.

WILLIAM CHRISTY
vs.
JAMES D. FINLEY.

1. And now comes the said defendant, by his attorneys, and answering the petition of the said plaintiff says, that he denies all and singular the allegations in the said petition, and prays that the plaintiff be held to strict proof of the same.

2. And as to the trespasses and ejectments, or either or any of them, complained of by [the] plaintiff in his petition, the defendant says he is not guilty, and puts himself upon the country, &c.

3. And the defendant further answers and says, that as to the pretended grant or title of the plaintiff to the land described in his petition, (if any paper title he has) the same bears date, to wit, the twentieth day of September, A. D. 1835, and the land described in said pretended grant or title, and in said petition, is, and was at the date of said grant, situated in the twenty frontier leagues bordering on the United States line, and said pretended grant was made without the approbation or assent of the executive of the national government of Mexico.

4. And the said defendant further says, that if any such grant or title was made as by said plaintiff is pretended, the same was made on, to wit, the twentieth day of September, A. D. 1835, and was not made by any public officer, commissioner, or authority, then, to wit, at the date of said pretended grant or title, existing in the State of Coahuila and Texas, competent to make the same.

5. And the said defendant further says, that the plaintiff claims the land sued for under and through a pretended grant from the government of the State of Coahuila and Texas made to one Miguel Arceniega, as a Mexican and purchaser, and purporting to have been procured for the said Arcenieger by one William G. Logan, as his agent. And the defendant says, that the said pretended grant or title of the plaintiff to the land sued for is not valid in law, because the same was procured from the government of the State of Coahuila and Texas by fraud, in this, that the said Miguel Arceniega, to whom the said grant purports to have been made, and the said William G. Logan, combined and confederated together for the purpose of evading the law, then in force, allowing the sale of lands to Mexicans, and to them only; and falsely and fraudulently represented to the said government that the application by said Arceniega for the said grant of land was really and bona fide made for him by the said Logan, and that the said Arceniega was to be the real purchaser of said land, and to hold and enjoy the same as a Mexican citizen; while, in truth, the said Arceniega fraudulently permitted the said Logan to use his name, and, in his name, procure the said grant solely for the use and benefit of him, the said Logan, who was not, at the time of procuring said grant, a Mexican citizen; and who, by the false and fraudulent practices aforesaid, procured the said grant and appropriated the land to his (the said Logan's) own use and benefit.

6. And the said defendant says, that the plaintiff claims the premises described in his petition by a pretended grant purporting to have been made by authority of the government of the State of Coahuila and Texas to one Miguel Arceniega, bearing date, to wit, the twentieth

day of September, A. D. 1835; and that the said pretended grant was made upon the conditions that the said Arceniega, or the person or persons to whom he might alienate the land in said grant described, should cultivate the same within six years from the acquisition thereof by said pretended title, and pay for said land the price established by law. And the said defendant says, that the said Arceniega, and those claiming land under him, wholly failed to comply with said conditions.

7. And the said defendant says, that the said plaintiff claims the land described in his petition under and through a pretended grant purporting to have been made to one Miguel Arceniega by authority of the government of the State of Coahuila and Texas, bearing date, to wit, the twentieth day of September, A. D. 1835, and under and through a pretended chain of transfer from said Arceniega to said plaintiff; and that within six years from the date of said pretended grant, and before the annexation of Texas to the United States, the said pretended transfers were made to said plaintiff; and that the said plaintiff was not, at the date of said pretended transfers to him, and previous thereto had never been, a resident or citizen of Texas or of Mexico, but was then, and thence hitherto continued to be, a resident and citizen of the United States of America, owing and paying allegiance to the government thereof.

8. Said defendant further says, that the land claimed by plaintiff in his petition is located within the territory designated as the twenty frontier leagues, bordering on the United States, in the act of the Congress of the Republic of Texas, approved January 9th, A. D. 1841, entitled "an act to quiet the land titles within the twenty frontier leagues bordering on the United States of the North," and is claimed by plaintiff by virtue of said location made prior to the seventeenth day of March, A. D. 1836; and that said plaintiff, and those through whom he claims said land, did not commence an action to try the validity of said claim within twelve months from the passage of the act aforesaid.

HENDERSON HILL,
FRAZIER & SHEDD,
*Att'ys for defendant.*

And afterwards, to wit, on the 12th day of April, in the year last aforesaid, the plaintiff, by his attorney aforesaid, filed his replications and demurrers to the pleas in the defendant's answer contained, in the words and figures following, to wit:

THE UNITED STATES OF AMERICA,
*District of Texas, to wit:*
District court, April term, 1850.

WILLIAM CHRISTY
vs.
JAMES D. FINLEY.
} No. 173—Trespass.

*Similiter to 2d plea.*

2. And the plaintiff, by attorney comes, and as to the plea by the

defendant secondly in his answer herein pleaded, whereof said defendant put himself upon the country, he, said plaintiff, doth the like.

*Demurrer to 3d plea.*

And the said plaintiff by attorney, comes and says, he ought not to be barred and precluded from having and maintaining his action aforesaid by reason of anything in the said defendant's third plea in his answer pleaded, because he says that the said answer and the matters and things therein contained are not sufficient in law to bar and preclude him from having and maintaining his action aforesaid, and this he is ready to verify; wherefore he prays judgment, &c.

And for cause of demurrer according to the form of the statute in such case made and provided, the said plaintiff sets down and shews the following, viz:

1st. The said third plea in bar of the plaintiff's action attempts to set up the want of the approbation or assent of the executive of the national government of Mexico to the issuance of a grant within the twenty border leagues, when the national colonization law, under which is sought the benefit of this bar, contains no prohibition to the issuance of such grant within said border leagues without the consent of said executive of Mexico; but if at the time of the issuance of said grant there was any such prohibition, it extended only to the making settlements within said border leagues.

2d. The said third plea in bar of plaintiff's cause of action attempts to set up the issuance of a grant under which plaintiff claims on the 20th day of September, 1835, without the approbation of the supreme executive of Mexico within the border leagues, but does not shew the nature or kind of said grant so as to enable the court to judge of its validity.

3d. And there are other grounds, &c.

*Replication to 4th plea.*

4th. And for replication to the fourth plea by the said defendant in his answer pleaded the said plaintiff, by his attorney, comes and says, precludi non, because he says the grant under which he, the said plaintiff, claims, was made by an authority at the date of said grant, in the State of Coahuila and Texas existing and competent to make the same, and this he prays may be inquired of by the country.

*Replication to 5th plea.*

5th. And for replication to the fifth plea by the said defendant in said answer pleaded, said plaintiff, by attorney, comes and says, precludi non, because he says that the grant under which the said plaintiff claims was not obtained or procured to be issued by fraudulent misrepresentations as in said fifth plea alleged, and this said plaintiff prays may be inquired of by the country.

*Demurrer to 6th plea.*

6th. And as to the sixth plea by said defendant in his said answer pleaded the said plaintiff says, precludi non, because he says the said plea and the matters and things therein contained, are not sufficient in law to bar and preclude him from having and maintaining his action aforesaid, and this he is ready to verify; wherefore he prays judgment, &c.

And for cause of demurrer, according to the form of the statute in such case made and provided, the said plaintiff sets down and shews the following, to wit:

1st. The conditions set forth in said plea, as those upon which said grant was issued, as is manifest by the said plea, were conditions subsequent and not precedent, and are not conditions of which the said defendant can take advantage upon a failure in their performance.

2d. A failure to perform the conditions in said plea set out, might have been cause of forfeiture of the estate passed by the said grant in said plea set out on a proceeding in behalf of the State, but is no reason why the defendant before forfeiture declared should, against plaintiff, retain possession in said grant mentioned.

3d. And the said plea is in other respects defective, informal, and insufficient, &c.

*Demurrer to seventh plea.*

7th. And as to the seventh plea by the said defendant in his said answer pleaded said plaintiff, by attorney, says, precludi non, because he says the said plea, and the matters and things therein contained, are not sufficient in law to bar and preclude him from having and maintaining his action aforesaid, and this he is ready to verify; wherefore he prays judgment, &c.

And for cause of demurrer, according to the form of the statute in such case made and provided, the said defendant sets down and shows the following:

1. The said plea in bar avers, that the estate in the premises, in the plaintiff's petition mentioned, was transferred to the said plaintiff while and during the time he was a citizen of the United States of America, and owing allegiance to the same, and an alien to the Republic of Texas; yet shows no forfeiture declared, an office found, so as to divest the estate vested by said transfer.

2. And the said plea is in other respects defective, informal, and insufficient, &c.

*Demurrer to eighth plea.*

8. And as to the eighth plea by the said defendant in his said answer pleaded said plaintiff says, precludi non, because he says the said plea, and the matters and things therein contained, are not suffi-

cient in law to bar and preclude him from having and maintaining his action aforesaid, and this he is ready to verify; wherefore he prays judgment, &c.

And for cause of demurrer, according to the form of the statute in such case made and provided, the said defendant sets down and shows the following, to wit:

1. The said act of congress of the Republic of Texas referred to in said plea, at the time of the approval thereof, since, and now, was not and is not the law of the land.

2. The said act of congress of the Republic of Texas was made, and was intended, to impair the obligation of contracts.

3. And the said plea is in other respects defective, informal, and insufficient, &c.

ROB. HUGHES,
*For plaintiff.*

And afterwards, to wit, at a term of said court, begun and held as aforesaid, on the first Monday in the month of May, in the year last aforesaid, this case was continued until next term.

And afterwards, to wit, on the 11th day of February, A. D. 1851, being a day in a term of said court, begun and held as aforesaid, on the first Monday in the month of December aforesaid, the following order was made herein, to wit:

On motion of the attorneys for defendant in this cause, it is ordered that the defendant herein have leave to amend his answer; and, by agreement of parties, this cause is set for trial on the first Monday in May next.

And thereupon said defendant, by his attorneys, Henderson, Hill, and Frazier, filed his amended answer in the words and figures following, to wit:

UNITED STATES OF AMERICA,
*District of Texas.*

District court, December term, A. D. 1850.

WILLIAM CHRISTY
vs. } No. 173.
JAMES D. FINLEY.

1. And now at this term comes the said defendant, by his attorneys, and leave of the court being first obtained, amends his answer, and for further plea says: That, as to the land described in the petition of the plaintiff, the same is part of an eleven-league claim, which was located within the twenty frontier leagues bordering on the boundary line between Texas and the United States of North America, previous to the 17th day of March, A. D. 1836, to wit, in September, A. D. 1835, and was located without the approbation or assent of the national executive of Mexico.

2. And for further plea said defendant, by his attorneys, says, that

as to the pretended grant, under and by virtue of which plaintiff claims the land described in his petition, the same is an eleven league grant, and was issued on, to wit, the 22d day of September, A. D. 1835, by one Radford Berry, as the pretended constitutional alcalde of Nacogdoches, under pretence of authority vested by the decree of the governor of Coahuila and Texas, dated the 5th day of April, A. D. 1831, and was issued without the approbation or assent of the supreme national executive of Mexico.

3. And for further plea the said defendant, by his attorneys, says, that the said plaintiff claims the land described in his petition, under and through a pretended grant purporting to have been made on, to wit, the twenty-second day of September, A. D. 1835, by one Radford Berry, as the alcalde of Nacogdoches, under pretended authority from the governor of the State of Coahuila and Texas, bearing date the 5th day of April, A. D. 1831, to one Miguel Arceniega; and under and through a pretended chain of transfers from the said Miguel Arceniega to said plaintiff, made and dated before the time when the constitution of the Republic of Texas took effect; that is to say, under and through a pretended transfer, bearing date the 23d day of March, A. D. 1836, purporting to have been made by one William G. Logan, acting in his own name, as well as in his capacity of agent and attorney in fact of Miguel Arceniega, to Andrew Hodge, junior, in the city of New Orleans and State of Louisiana; and under and through a pretended transfer bearing date on the sixth day of August, A. D. 1836, purporting to have been made in the city of New Orleans and State of Louisiana, by Andrew Hodge, junior, to the plaintiff; and that at the date of said transfer, to wit, on the sixth day of August, A. D. 1836, the said plaintiff was not, and previous thereto had never been, a citizen, resident or naturalized, of Texas, of Coahuila and Texas, or of Mexico; but was then, on, to wit, the day and year last aforesaid, and thence hitherto has continued to be, a resident and citizen of the United States of North America, owing and paying allegiance to the Government thereof.

4. And for further plea, said defendant, by his attorneys, says, that the land described in the petition of the plaintiff is part of eleven league claim, situate within the twenty frontier leagues on the United States line; that the plaintiff claims the same by virtue of a pretended grant, purporting to have been issued by authority of the governor of the State of Coahuila and Texas, to one Miguel Arceniega for eleven leagues of land, bearing date on, to wit, the twenty-second day of September, A. D. 1835; that said grant was made upon the conditions expressed in the same, that said grantee would construct, within one year, fixed and permanent corner posts at each angle of the land, and that he would settle and cultivate the same, and pay the price thereof, as required and established by law; that said grantee, and those claiming under him, wholly failed to perform said conditions, or any of them; that, on the 9th day of January, A. D. 1841, the congress of the Republic of Texas passed an act to quiet the land titles within the twenty

frontier leagues bordering on the United States of the North; and in and by said act the plaintiff, who then claimed said land by virtue of said grant, was required to commence his action within twelve months from the passage of said act, to try the validity of said claim, and to prove the performance of the conditions aforesaid on the trial of said action, and the defendant says that said plaintiff failed to bring said action and to make said proof, as, by said act, he was required to do.

5. And the said defendant, for further plea, by his attorneys, says, that the pretended grant, bearing date on, to wit, the 22d of September, A. D. 1835, and purporting to have been issued by one Radford Berry, as alcalde of Nacogdoches, to one Miguel Arceniega, under and by virtue of which plaintiff claims the land described in his petition, purports to have been issued by authority of a *concession* of eleven leagues of land, made by the governor of the State of Coahuila and Texas, bearing date the fifth day of April, A. D. 1831, to said Arceniega; and the defendant says, that the said Arceniega did not enter into possession of the land granted in said concession within eighteen months from the publication of the decree [of] the congress of the State of Coahuila and Texas numbered (190) one hundred and ninety, of the 28th day of April, A. D. 1832, as by the 16th article of said decree he was required to do.

HENDERSON, HILL & FRAZIER,
*Attorneys for defendant.*

And afterwards, to wit, on the 8th day of July, in the year last aforesaid, the plaintiff aforesaid, by his attorney aforesaid, filed his demurrer to the pleas in said amended answer contained, in the words and figures following, to wit:

THE UNITED STATES OF AMERICA,
*District of Texas, to wit:*

WILLIAM CHRISTY
vs. } 173.
JAMES D. FINLEY.

District court, May term, 1851.

And now, at this term, comes the plaintiff aforesaid, by his attorney, and says he ought not to [be] barred and precluded from having and maintaining his action aforesaid, by reason of anything in the first plea of the amended answer by the defendant herein filed, because he says the said plea, and the matters and things therein contained, are not sufficient in law to bar and preclude him from having and maintaining his action aforesaid, and this he is ready to verify; wherefore he prays judgment, &c.

And for cause of demurrer, according to the form of the statute in such case made and provided, the said plaintiff sets down and shews the following, to wit:

1. The said plea, as an objection to the validity of the grant in said

plea referred to, insists that the same was located within the twenty border leagues on the line of the United States of the North, without the approbation of the executive of the Mexican Republic, when no such approbation was necessary or required, either by the laws of the Republic of Mexico, or the laws of the State of Coahuila and Texas.

2. And the said plea is in other respects defective, informal, and insufficient, &c.

And as to the second plea in said answer as amended contained the said plaintiff says, precludi non, because he says the said plea, and the matters and things therein contained, are not sufficient in law to bar and preclude him from having and maintaining his action aforesaid, and this he is ready to verify; wherefore he prays judgment, &c.

And for cause of demurrer, according to the form of the statute in such case made and provided, the said plaintiff sets down and shews the following, to wit:

1. The said defendant, by his said plea, sets out that the grant under which the plaintiff claims was an eleven league grant within the twenty leagues bordering on the United States line of the North, made by an alcalde, by authority from the executive of Coahuila and Texas, without the approbation of the executive of the Republic of Mexico, in bar of plaintiff's action, yet shews no prohibition to the making of said grant without the previous approbation of such executive.

2. And the said plea is in other respects defective, informal, and insufficient, &c.

And as to the third plea in said amended answer pleaded said plaintiff says precludi non, because he says the said plea, and the matters and things therein contained, are not sufficient in law to bar and preclude him from having and maintaining his action aforesaid, and this he is ready to verify; wherefore he prays judgment, &c.

And for cause of demurrer, according to the form of the statute in such case made and provided, the said plaintiff sets down and shews the following, viz:

1. The said plea in bar avers that the estate in the premises in the plaintiff's petition mentioned, was transferred to the said plaintiff while and during the time he was a citizen of the United States of America, and owing allegiance to the same, and an alien to the Republic of Texas, yet shews no forfeiture on office found, so as to divest the estate vested by said transfer.

2. And the said plea is in other respects defective, informal, and insufficient, &c.

And, as to the fourth plea in said amended answer pleaded, the said plaintiff says, precludi non, because he says the said plea, and the matters and things therein contained, are not sufficient in law to bar and preclude him, said plaintiff, from having and maintaining his action aforesaid, and this he is ready to verify. Wherefore he prays judgment, &c.

And for cause of demurrer, according to the form of the statute in

such case made and provided, the plaintiff sets down and shews the following, to wit:

1. The said plea is double, in this, that it attempts to set up in bar of plaintiff's action a failure to perform the conditions annexed to the grant in the same mentioned, and also the failure to bring suit within twelve months next after the passage by the congress of the Republic of Texas of the act in said plea set out, to try the validity of said grant, and to prove performance of the conditions annexed to the grant aforesaid.

2. The grant in said plea set out vested the dominion, full, ample, and complete, of, in, and to the land embraced in the same, in the grantee, and the congress of the Republic of Texas had no authority to require suit to be brought to test the validity of said grant or the proof of the performance of the conditions to said grant annexed.

3. The act of the congress of the Republic of Texas referred to in said plea is not, and was not, the law of the land.

4. The said act of the said Congress of the said Republic of Texas was made and intended to impair the obligations of contracts.

5. And the said plea is in other respects defective, informal, and insufficient, &c.

ROB. HUGHES,
*For plaintiff.*

The words "and this he is ready to verify" on third page interlined.

ROB. HUGHES.

THE UNITED STATES OF AMERICA,
*District of Texas, to wit:*

District court, May term, 1851.

WILLIAM CHRISTY
vs. } 173.—Trespass.
JAMES D. FINLEY.

And now comes the plaintiff aforesaid, by his attorney, and says, he ought not to be barred and precluded from having and maintaining his action aforesaid by reason of anything in the fifth plea in said defendant's answer contained, because he says the said plea, and the matters and things therein contained, are not sufficient in law to bar and preclude him from having and maintaining his action aforesaid, and this he is ready to verify. Wherefore he prays judgment, &c.

And for cause of demurrer, according to the form of the statute in such case made and provided, the said plaintiff sets down and shews the following, to wit:

1st. The matter set up in bar by said plea is only a direction to the executive of the State of Coahuila and Texas, and, by the law referred to in said plea, no forfeiture of right, or any other penalty, was annexed or prescribed, should possession be not taken within the time prescribed.

2d. The said matter pleaded in bar was only a direction to the executive, and did not operate on the right of the party.

3d. The law under which the said matter set up by said defendant's plea is pleaded, was repealed before the issuance of the grant under which said plaintiff claims.

4th. And the said plea is in other respects defective, informal, and insufficient, &c.

ROB. HUGHES,
*For plaintiff.*

And now, at this day, to wit, on the 9th of July, A. D. 1851, being a day in the term first herein before mentioned, the following judgment was rendered, to wit:

This day came the parties aforesaid by their attorneys, and the questions of law arising upon the demurrers of the plaintiff to the third, sixth, seventh, and eighth plea of the defendant in his original answer pleaded, and to the first, second, third, and fourth, and fifth plea in his amended answer pleaded, having been argued and submitted, because it seems to the court that the law is for the defendants, it is considered by the court that the said demurrers be overruled; and the plaintiff, by his attorney, stating that he intended to abide by his demurrer, it is further considered by the court, that the defendant go hence without *day*, and that he recover of the plaintiff his costs by him about his defence in this behalf expended, to be taxed by the clerk, &c.

And thereupon, on the 16th day of the said month of July, A. D. 1851 aforesaid, the plaintiff by his attorney aforesaid, came into the clerk's office of the said court, and assigned error in the record and proceedings, and giving the judgment aforesaid, in the words and figures following, to wit:

THE UNITED STATES OF AMERICA,
*District of Texas, to wit:*

District court.

WILLIAM CHRISTY, plaintiff,
vs.
JAMES D. FINLEY, defendant. } 173—Trespass.

And now, on this 16th day of July, A. D. 1851, comes the plaintiff aforesaid by his attorney, and says, that in the record and proceedings aforesaid, and also in giving the judgments aforesaid, there is manifest error in this, to wit:

1st. The defendant's third plea in his original answer, and the first and second in his amended answer contained, attempt to set up in bar of plaintiff's action, the issuance of the grant under which plaintiff claims, without the approbation of the executive of the Republic of Mexico, when by the law of the State of Coahuila and Texas, under which the said grant was issued, there was no prohibition to the issu-

ance of said grant without such approbation, and the said fact pleaded is no bar; yet the said court overruled a demurrer to said plea, when said demurrer should have been sustained.

2d. The said defendant by his sixth plea in his original answer contained, attempts to set up in bar of said plaintiff's action aforesaid the non-performance of conditions subsequent, to which the grant under which the plaintiff claims by the law of the State of Coahuila and Texas, as it was at the date of said grant, was subject, without shewing a re-entry or other mode of enforcing a forfeiture of the estate conveyed or passed by said grant or re-vestiture of the same in the said State of Coahuila and Texas, or in the Republic or State of Texas; yet the court, by overruling the demurrer to said pleas, allowed a bar by reason of the non-performance of said conditions in favor of a third party, not the grantor, when said demurrer should have been sustained.

3d. The said defendant by his seventh plea in his original answer, and the third in his amended answer pleaded, attempts to set up in bar of plaintiff's action the fact that the lands claimed and sued for by the plaintiff in his petition described, were sold and transferred to the said plaintiff while and during the time he was a citizen of the United States of America, owing allegiance to the same, and an alien to the Republic of Texas, without shewing any office found, or forfeiture declared in any manner whatever; yet the court overruled the plaintiff's demurrers to said pleas, when the same should have been sustained.

4th. The said defendant by his eighth plea in his original answer, and the fourth in his amended answer, pleaded, attempts to set up in bar of plaintiff's action the failure to commence action within twelve months after the passage of an act by the congress of the Republic of Texas, entitled "an act to quiet land titles within the twenty frontier leagues bordering on the United States of the North," to try the validity of the grant under which plaintiff claims, when it is apparent that said grant under which plaintiff claims was a perfect, and not an imperfect or inchoate title, issued by the State of Coahuila and Texas, and as to which the government of the Republic of Texas had no legitimate power or authority to require or prescribe the commencement of any suit in the form and manner the same was prescribed, to try the validity of the title vested by said grant, or create a bar in consequence of a failure to bring such suit; yet the demurrer to said plea was overruled by the court, when the same should have been sustained.

5th. The said defendant by his fifth plea in his amended answer pleaded attempts to set up, in bar of plaintiff's action, that the grantee of the land in the petition described did not enter into the land conceded within eighteen months from the publication of the decree of the congress of the State of Coahuila and Texas, numbered one hundred and ninety, of the 28th day of April, 1832, as by the 16th article of said decree he was required to do, when by the provisions of said sixteenth article it is evident that the requirements of said decree were on-

ly directions to the executive of the State of Coahuila and Texas; and said decree, No. 190, before the issuance of the said grant under which said plaintiff claims was repealed, and was no longer in force in the said State of Coahuila and Texas; yet the court overruled said demurrer, when the same, according to the rules of law, should have been sustained.

And the said plaintiff prays a writ of error to be directed, &c., and that the judgment aforesaid, for the errors aforesaid, and for other errors in the record and proceedings aforesaid may be reversed, annulled, and altogether held for nothing, &c.

ROB'T HUGHES,
*For plaintiff.*

And afterwards, to wit, on the 19th day of the month of July last aforesaid, the said plaintiff gave bond, with security, in the words and figures following, to wit:

WILLIAM CHRISTY
vs. } In error.
JAMES D. FINLEY.

Know all men by these presents, that we, William Christy, of Louisiana, and Robert Hughes, of the city of Galveston, in the State of Texas, are held and firmly bound unto James D. Finley in the sum of two hundred dollars, to be paid to the said James D. Finley, his executors or administrators; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, our heirs, executors, and administrators, and each of them, firmly by these presents. Sealed with our seals and dated this 19th day of July, A. D. 1851.

Whereas the above named William Christy hath prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment in the above entitled cause, rendered by the district court of the United States, for the district of Texas: Now, therefore, the condition of the above obligation is such, that if the above named William Christy shall prosecute his said writ of error to effect, and answer all costs if he shall fail to make his plea good, this obligation shall be void, otherwise to be and remain in full force and virtue.

WILLIAM CHRISTY, [SEAL.]
By attorney, ROB. HUGHES.
ROB. HUGHES. [SEAL.]

Sealed and delivered in presence of, and approved by—
JOHN C. WATROUS.

Whereupon writ of error was issued in the words and figures following, to wit:

UNITED STATES OF AMERICA.

The President of the United States of America, to the judge of the district court of the United States, for the district of Texas, greeting:

Because in the record and proceedings, as also in the rendition of a judgment in a plea, which is in the said district court of the United States, for the district of Texas, before you, between William Christy and James D. Finley, a manifest error hath happened to the great damage of the said William Christy, as by his complaint appears; and it being fit that the error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, under seal, distinctly and openly, that you send the record and proceedings, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday in December next, in said Supreme Court to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct the error, what of right and according to law and custom of the United States should be done.

Witness the honorable Roger B. Taney, chief justice of the said Supreme Court of the United States, this the sixteenth day of [SEAL.] July, in the year of our Lord one thousand eight hundred and fifty-one, and of the independence of the United States the seventy-sixth.

JAMES LOVE, *Clerk*.

DISTRICT COURT OF THE UNITED STATES,
*District of Texas*.

WILLIAM CHRISTY
vs.
JAMES D. FINLEY.

I, James Love, clerk of the district court of the United [States] for the district of Texas, certify, that the foregoing is a true copy of the record and all the proceedings had in the above entitled cause.

In witness whereof I have hereunto set my hand and affixed the seal of said court, at the city of Galveston, this thirteenth [SEAL.] day of September, in the year of our Lord one thousand eight hundred and fifty-one, and of the independence of the United States the seventy-sixth.

JAMES LOVE, *Clerk*.

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America, to the judge of the district court of the United States, for the district of Texas, greeting:

Because in the record and proceedings, as also in the rendition of a judgment, in a plea which is in the said district court of the United

1329.

States for the district of Texas, before you, between William Christy and James D. Finley, a manifest error hath happened to the great damage of the said William Christy, as by his complaint appears; and it being fit that the error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, then under seal, distinctly and openly, that you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the first Monday in December next, in said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct the error, what of right and according to law and custom of the United States should be done.

Witness the honorable Roger B. Taney, chief justice of the said Supreme Court of the United States, this the sixteenth day [SEAL.] of July, in the year of our Lord one thousand eight hundred and fifty-one, and of the independence of the United States the seventy-sixth.

JAMES LOVE, *Clerk*.